

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the  
Invasive Species/Infested Waters  
Citation No. 172167, Issued to  
William Louis Heitmann

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter came before Administrative Law Judge Amy J. Chantry for a Prehearing Conference on October 2, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on September 5, 2013. Conservation Officer Scott Arntzen and Conservation Office Vuthy Prill appeared on behalf of the Minnesota Department of Natural Resources (DNR). Appellant William Louis Heitmann (Heitmann) appeared on his own behalf without counsel.

During the Prehearing Conference on October 2, 2013, the parties agreed to conduct a formal hearing on the citation. Sworn testimony was taken at the hearing. The parties agreed that the Administrative Law Judge could make a recommendation based on the record created during the hearing. The record closed on October 2, 2013, at the conclusion of the hearing.

**STATEMENT OF THE ISSUE**

(1) Whether Heitmann was properly issued a civil citation under Minn. Stat. § 84D.10, subd. 4(b), for failing to have drain plugs removed or open when transporting water-related equipment?

(2) Whether \$100 is the appropriate civil penalty for the violation under Minn. Stat. § 84D.13, subd. 5(a)(6)?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that Appellant committed a violation of Minn. Stat. § 84D.10, subd. 4(b), and, that a civil penalty of \$100 is an applicable penalty under Minn. Stat. § 84D.13, subd. 5(a)(6). Therefore, the Administrative Law Judge respectfully recommends that the Commissioner **AFFIRM** the citation and fine.

Based on the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On August 18, 2013, Conservation Officer Scott Arntzen and Conservation Officer Vuthy Pril were parked at the White Bear Lake public access in White Bear Lake, Minnesota.<sup>1</sup> Conservation Officers Arntzen and Pril were at the public landing to observe the boats being launched or removed from the waters of White Bear Lake.<sup>2</sup>

2. Conservation Officers Arntzen and Pril were particularly interested in ensuring that boats being launched into or removed from the lake followed all conservation requirements to ensure that aquatic invasive species were not transported by water-related equipment into or out of the lake.<sup>3</sup> Certain aquatic invasive species, such as Zebra Mussels, are transportable in the bilge water of watercraft.<sup>4</sup> Thus, to make sure invasive species are not transported from one body of water to another, Minnesota state law requires that bilge drain plugs on boats be open or removed when the boat is being transported. This allows all the water to drain from the boat before the boat is launched in other waters.<sup>5</sup>

3. At approximately 5:50 p.m. on August 18, 2013, Conservation Officers Arntzen and Pril observed Heitmann drive his vehicle, which was pulling his boat, into the public access. Conservation Officers Arntzen and Pril observed that the drain plug on the back of Heitmann's boat was not removed.<sup>6</sup>

4. Conservation Officers Arntzen and Pril also observed about a cup of brown liquid in the boat. Conservation Officer Arntzen did not cite Heitmann for this violation.<sup>7</sup>

5. Heitmann did not dispute Conservation Officer Pril's testimony. Heitmann agreed that the drain plug was not removed prior to traveling with his boat on a public roadway.<sup>8</sup>

6. Heitmann explained that he put the drain plug back into his boat within one mile of the lake. He did not think it was a violation of the law for him to put the drain plug back in once his boat was dry.<sup>9</sup>

7. Based upon his observations, Conservation Officer Arntzen issued Heitmann a Civil Citation, No. 172167 for failing to open or remove a drain plug while transporting water-related equipment. The penalty imposed was a \$100 fine.<sup>10</sup>

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<sup>1</sup> Testimony of Scott Arntzen; Test. of Vuthy Pril.

<sup>2</sup> Test. of S. Arntzen; Test. of V. Pril.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* See also, Minn. Stat. § 84D.10, subd. 4(b).

<sup>6</sup> *Id.*

<sup>7</sup> Test. of S. Arntzen; See Minn. Stat. § 84D.10, subd. 4(a).

<sup>8</sup> Test. of William Heitmann.

<sup>9</sup> Test. of W. Heitmann.

<sup>10</sup> Civil Citation No. 172167 on file and of record in this matter. See also, Minn. Stat. § 84D.13, subd. 5(a)(5).

8. Heitmann timely appealed the citation and requested that it be withdrawn.<sup>11</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. This matter is properly before the Administrative Law Judge and the Commissioner of Natural Resources pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8, and 116.072, subd. 6.

2. Minn. Stat. § 84D.10, subd. 4(b) requires that drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment. “Water-related equipment” includes boats.<sup>12</sup>

3. DNR Conservation Officers are authorized to issue citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b).<sup>13</sup>

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be brought under the procedures set forth in Minn. Stat. § 116.072, subd. 6, provided that a hearing is requested within 15 days after receipt of the citation.

5. Heitmann filed a timely appeal and request for hearing.

6. At a hearing on a violation of Minn. Stat. ch. 84D, the burden is on the DNR to show by a preponderance of the evidence that Heitmann violated the statute cited.<sup>14</sup>

7. The DNR has established, by a preponderance of the evidence, that Heitmann violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

8. The Administrative Law Judge, therefore, finds that it is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 172167.

9. The statutorily-prescribed fine for a violation of Minn. Stat. § 84D.10, subd. 4(b) is \$100.<sup>15</sup>

10. Pursuant to Minn. Stat. § 116.072, subd. 6(c), the Administrative Law Judge may not recommend a change in the amount of the proposed penalty unless the

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<sup>11</sup> See Letter from Chandler to the Commissioner of Natural Resources sent August 24, 2013, on file and of record in this matter.

<sup>12</sup> Minn. Stat. § 84D.02, subd. 18a.

<sup>13</sup> Minn. Stat. § 84.13.

<sup>14</sup> Minn. R. 1400.7300, subp. 5.

<sup>15</sup> Minn. Stat. § 84D.13, subd. 5(a)(6).

judge determines that, based upon the factors in subdivision 2,<sup>16</sup> the amount of the penalty is unreasonable.

11. The Administrative Law Judge finds that the penalty amount of \$100 is not unreasonable.

12. For purposes of Minn. Stat. § 116.072, subd. 6(d), Heitmann's request for a hearing was not solely for purposes of delay and was not frivolous.

13. The attached Memorandum provides further explanation of the reasons for these Conclusions and is incorporated herein.

Based on the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 172167 issued to William Louis Heitmann be **AFFIRMED**.

Dated: October 31, 2013

s/Amy J. Chantry

AMY J. CHANTRY

Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five (5) days after receipt of the Report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner, and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

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<sup>16</sup> Minn. Stat. § 116.072, subd. 2, provides that, in determining the amount of penalty, the commissioner may consider: (1) the willfulness of the violation; (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state; (3) the history of past violations; (4) the number of violations; (5) the economic benefit gained by the person by allowing or committing the violation; and (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

## MEMORANDUM

In an appeal of a DNR citation, the burden of proof is on the DNR to prove by a preponderance of the evidence that a violation of law occurred.<sup>17</sup> A preponderance of the evidence means that it must be established by a greater weight of the evidence.<sup>18</sup> “It must be of a greater or more convincing effect and ... lead you to believe that it is more likely that the claim...is true than...not true.”<sup>19</sup> The preponderance of the evidence standard is less than the clear and convincing standard, and less than the proof beyond a reasonable doubt standard used in criminal trials.<sup>20</sup>

Heitmann did not dispute that he transported his boat into the White Bear Lake public access without removing the drain plug from his boat. In his defense, Heitmann asserted that he should not be held responsible for a violation of Minn. Stat. § 84D.10, subd. 4(b), because the \$100 fine is unnecessary to ensure that he complies with Minnesota laws involving the spread of invasive aquatic species in the future. The Administrative Law Judge believes that Heitmann is sincere and that he will remove the drain plug from his boat in the future.

However, there is no exemption under Minn. Stat. § 84D.10, subd. 4(b), that would allow the Administrative Law Judge to waive the \$100 civil penalty because Heitmann now understands that he must remove his boat's drain plug whenever and wherever he is transporting his boat. The purpose of Minn. Stat. § 84D.10, subd. 4(b), is to prevent boats from being transported with their drain plugs in. An inserted drain plug prevents potentially infested lake water from draining out of a boat. If a boat is not properly drained, potentially infested water can be transported from one lake to another; thereby, infesting a lake with an aquatic invasive species.

A preponderance of the evidence establishes that Heitmann transported his boat into the public access while its drain plug was inserted. Therefore, the DNR has met its burden of proving that Heitmann was in violation of Minn. Stat. § 84D.10, subd. 4(b). In addition, the \$100 fine is appropriate in relation to the harm that the DNR seeks to prevent under Minn. Stat. § 84D.13, subd. 5(a)(6). Accordingly, it is respectfully recommended that the citation and \$100 fine be **AFFIRMED**.

**A. J. C.**

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<sup>17</sup> Minn. R. 1400.7300, subp. 5.

<sup>18</sup> 4 Minnesota Practice, CIV JIG 14.15.

<sup>19</sup> *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

<sup>20</sup> *State v. Shamp*, 422 N.W.2d 520, 525 (Minn. Ct. App. 1988), *citing Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978), *review denied* (Minn. June 10, 1988).